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September 13, 2023

VIA ECF

United States District Court
Eastern District of New York
Attn: Hon. Orelia E. Merchant, U.S.D.J.
225 Cadman Plaza East
Courtroom 6C South
Brooklyn, NY 11201-1804

Re: Superb Motors Inc., et al. v. Deo, et al.
Case No.: 2:23-cv-6188 (OEM) (ST)

Dear Judge Merchant:

This firm represents Plaintiffs Superb Motors Inc. (“Superb”), Team Auto Sales LLC, and Robert Anthony Urrutia (collectively the “Moving Plaintiffs”) in the above-referenced case. The Moving Plaintiffs submit this letter response in opposition to Defendants’ correspondence dated September 12, 2023 contesting service of the underlying Order to show cause for injunctive relief and the summons & complaint. See ECF Docket Entry 34.

On Saturday, August 19, 2023, your undersigned notified Defendants’ counsel and the Defendants against which relief is sought of the instant application. See ECF Docket Entry 12 ¶ 7. On August 21, 2023, Defendants responded to oppose the application for injunctive relief. See ECF Docket Entry 13 (“I am aware that the above referenced Plaintiffs have brought an Order to Show Cause before the Court, and I need to give the Court certain information related thereto”). Defendants have had access to – and have indeed accessed – all the documents filed in this case, and have responded to virtually every document filed by the Moving Plaintiffs. Their reliance on a perceived irregularity in service of process is therefore meritless, as they cannot establish any prejudice given the fact the Moving Plaintiffs apprised them of the application and because they responded to same.

Further, this Court never signed the Moving Plaintiffs’ proposed Order to show cause directing service, and all other directives concerning service were properly and immediately effectuated. See ECF Docket Entries 12, 19, 22, and 27.

The Moving Plaintiffs also respectfully submit this letter in compliance with this Court’s Order to submit a status report to the Court as to service of the summons and complaint in this case. See Text Only Order dated September 7, 2023. The summons was issued by the Clerk of the Court on Monday, September 11, 2023. See ECF Docket Entry 28. As acknowledged by the Defendants, the Moving Plaintiffs have twice asked Defendants whether they would accept service of the summons and complaint; these communications have been ignored.

The summons and complaint were sent out for service with a process server yesterday, and the Moving Plaintiffs will file all affidavits of service upon receipt. Mr. Thomasson represents all of the Defendants the Moving Plaintiffs seek injunctive relief against, and he has responded on behalf of them to all of Moving Plaintiffs' filings. The Defendants are therefore engaging in gamesmanship to avoid a hearing on the merits.

Accordingly, the Moving Plaintiffs respectfully submit that there is no basis to delay the hearing, and that the parties should proceed tomorrow, as directed, in the interests of justice. See Text Only Order August 27, 2023. As noted therein, Nissan Motor Acceptance Corporation's ("NMAC") sent Superb a letter stating that termination is "effective September 18, 2023." Id. The Moving Plaintiffs will be irreparably harmed because they will immediately be forced to close down, with all of Superb's employees terminated, absent injunctive relief from this Court tomorrow. The Moving Plaintiffs will provide further evidence and argument concerning the existence of irreparable harm in their reply papers which will be filed later this evening.

As such, the hearing should proceed as scheduled. The Moving Plaintiffs thank this honorable Court for its time and attention to this case.

Dated: Lake Success, New York
September 13, 2023

Respectfully submitted,

MILMAN LABUDA LAW GROUP PLLC

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VIA ECF
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